

# **MINUTES OF THE OPEN SESSION**

## **OF THE RHODE ISLAND ETHICS COMMISSION**

**January 14, 2014**

**The Rhode Island Ethics Commission held its 1st meeting of 2014 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, January 14, 2014, pursuant to the notice published at the Commission Headquarters, the State House Library, and electronically with the Rhode Island Secretary of State.**

**The following Commissioners were present:**

**Ross Cheit, Chair    Mark B. Heffner**

**Deborah M. Cerullo SSND, Vice Chair            John M. LaCross**

**Frederick K. Butler\*    Edward A. Magro**

**Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt, Nicole B. DiLibero and Amy C. Stewart; and Commission Investigators Steven T. Cross, Peter J. Mancini and Gary V. Petrarca.**

**At 9:12 a.m. the Chair opened the meeting. The first order of business was the approval of minutes of the Open Session held on**

**December 17, 2013. Upon motion made by Commissioner Magro and duly seconded by Commissioner Cerullo, it was unanimously**

**VOTED: To approve minutes of the Open Session held on December 17, 2013.**

**The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of:**

**Mark J. Wildenhain, a member of the Pawtucket City Council, requesting an advisory opinion regarding the limitations the Code of Ethics places upon his participation in the City Council's ratification of various collective bargaining agreements, given that he has four family members who are City employees and will be impacted by these agreements.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. In response to Commissioner LaCross, Staff Attorney Stewart stated that that Code of Ethics does not prohibit the Petitioner from participating in the City Council's vote on the entire contract, once it is negotiated by others. She read aloud Commission Regulation 36-14-5004(b)(4)(B).**

**\*Commissioner Butler arrived at 9:19 a.m.**

**In response to Commissioner Cerullo, Staff Attorney Stewart replied that the City Council, as well as its Finance Committee of which the Petitioner is a member, only reviews contracts after the negotiations are complete and an agreement has been reached. The Petitioner explained that the three (3) members of the Finance Committee will review the contract and then make a recommendation to the nine (9) members of the City Council. Staff Attorney Stewart added that the Finance Committee's role in reviewing the contracts is just another part of the City Council's decision to accept or reject a contract. Upon motion made by Commissioner LaCross and duly seconded by Commissioner Magro, it was**

**VOTED: To issue an advisory opinion, attached hereto, to Mark J. Wildenhain, a member of the Pawtucket City Council.**

**AYES: Mark B. Heffner; John M. LaCross; Edward A. Magro;  
Deborah M. Cerullo; Ross Cheit.**

**ABSTENTIONS: Frederick K. Butler.**

**Commissioner Butler stated that he abstained because he arrived halfway during the discussion of this matter.**

**The next advisory opinion was that of:**

**Chris Fierro, the Chairman of the Rhode Island Department of Labor and Training Board of Review, requesting an advisory opinion regarding whether the Code of Ethics prohibits his participation in the Board of Review's consideration of an appeal involving its former chairperson.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present along with Ken Procaccini, Esq., legal counsel to the Board of Review. In response to Commissioner Cerullo, the Petitioner stated that he consulted with legal counsel and they could not find a way for the Board of Review to be bypassed. He stated that the Board has to hear Mr. Daniels' appeal. In response to Chair Cheit, the Petitioner informed that the other two (2) board members served with Mr. Daniels on the board and are not sure they could be impartial. He added that he did not serve with the former chairperson because he replaced him. Staff Attorney Stewart stated that it is remote and uncertain whether the Petitioner will apply for unemployment benefits when he leaves this position at some time in the future.**

**Commissioner Butler noted that the appeal before the Board of Review is very complex and fact specific. He stated that any impact on the Petitioner in the future was very remote. Legal Counsel Alves agreed with Commissioner Butler and stated that it is quite remote to think that the Petitioner's decision for Mr. Daniels could hypothetically help him sometime in the future. He added that the**

**District Court has de novo review of legal issues in this case if it was appealed.**

**In response to Commissioner Heffner, Staff Attorney Stewart explained that this advisory opinion finds that there is no conflict because any potential financial impact is too remote and hypothetical to be reasonably foreseeable. However, she stated that if the Commission found there to be a conflict, the staff would engage in a rule of necessity analysis and speak to all three (3) members of the Board, ascertaining each of their conflicts and likely coming to the same conclusion that the Petitioner can hear the case.**

**Discussion ensued as to why the other two (2) Board members did not seek advice from the Commission. Legal Counsel Alves stated that the other Board members do not have ethics issues, but rather face an issue of due process as to whether they can participate in an impartial manner. In response to Commissioner Cerullo, Staff Attorney Stewart stated that for there to be a conflict it must be reasonably foreseeable that the Petitioner's decision in the Daniels' matter will have a direct financial impact upon himself. Here, she explained that it was not reasonably foreseeable because any potential impact is remote and hypothetical, not knowing if or when the Petitioner will ever apply for unemployment benefits. The Petitioner added that a successor Board would not be bound by his decisions. Attorney Procaccini noted that the Board's decisions are binding on the Referees but only persuasive as to the Board. Upon**

**motion made by Commissioner Heffner and duly seconded by Commissioner Butler, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Chris Fierro, the Chairman of the Rhode Island Department of Labor and Training Board of Review.**

**The final advisory opinion was that of:**

**Paul Amaral, a member of the Board of Canvassers for the Town of Tiverton, requesting an advisory opinion regarding whether the Code of Ethics prohibits his simultaneous service as the Vice Chair of the Tiverton Democratic Town Committee and membership in the Democratic State Representative District 70 Endorsement Committee.**

**Staff Attorney Gramitt presented the Commission Staff recommendation. The Petitioner was present. In response to Commissioner Cerullo, Staff Attorney Gramitt stated that he believes that the advisory opinion, as drafted, sufficiently puts the Petitioner on notice of the occasions when he is required to recuse or should seek further advice from the Commission. Upon motion made by Commissioner Butler and duly seconded by Commissioner Magro, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Paul**

**Amaral, a member of the Board of Canvassers for the Town of Tiverton.**

**[Reporter's note: William DiStefano, Jr.'s request for an advisory opinion was withdrawn on January 13, 2014.]**

**The next order of business was the Director's Report. Executive Director Willever reported that there were eleven (11) complaints pending, nine (9) of which were for the non-filing of financial statements. He also stated that there were four (4) advisory opinions and one (1) litigation matter pending. He stated that four (4) APRA requests were granted since the last meeting, all of which were completed within one (1) business day.**

**At 9:55 a.m., upon motion made by Commissioner Cerullo and duly seconded by Commissioner LaCross, it was unanimously**

**VOTED: To go into Executive Session, to wit:**

**a) In re: Natalia Rosa-Sosa, Complaint No. NF2013-15, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**

**b) In re: Albert G. Brien, Complaint No. 2013-6, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**

**The Commission reconvened in Open Session at approximately 10:06**

**a.m. The next order of business was a motion to seal the minutes of the January 14, 2014, Executive Session. Upon motion made by Commissioner LaCross and duly seconded by Commissioner Magro, it was unanimously**

**VOTED: To seal the minutes of the January 14, 2014, Executive Session.**

**Chair Cheit reported that the Commission took the following actions in Executive Session:**

**1) In the matter of In re: Natalia Rosa-Sosa, Complaint No. NF2013-15, unanimously voted to find that there was probable cause to believe that the Respondent violated R.I. Gen. Laws § 36-14-16 by failing to file a Financial Disclosure Statement for calendar year 2012.**

**2) In the matter of In re: Albert G. Brien, Complaint No. 2013-6, unanimously voted to find that the Complaint states facts that, if true, are sufficient to constitute a knowing and willful violation of the Code of Ethics and authorized a full investigation.**

**[Reporter's note: Legal Counsel Alves recused from the matter In re: Albert G. Brien, Complaint No. 2013-6 and left the meeting at 10:02 a.m.]**

**The next order of business was New Business. There being none, at**



**10:08 a.m. upon motion made by Commissioner Magro and duly seconded by Commission LaCross, it was unanimously**

**VOTED: To adjourn.**

**Respectfully**

**submitted,**

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**John D. Lynch, Jr.**

**Secretary**